

2007 No. 1067

ENVIRONMENTAL PROTECTION

The Environmental
Impact Assessment and
Natural Habitats (Extraction
of Minerals by Marine
Dredging) (England and
Northern Ireland
Regulations 2007

Made - - - - -

28th March 2007

Laid before Parliament

4th April 2007

Coming into force - - -

1st May 2007



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The Secretary of State has been designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment and in relation to measures relating to the conservation of natural habitats and of wild fauna and flora.

The Secretary of State accordingly makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 56 of the Finance Act 1973^(c).

The Treasury has consented to the making of these Regulations as required by section 56(1) of the Finance Act 1973.

PART 1

INTRODUCTORY

Citation, commencement and application

1.—(1) These Regulations may be cited as the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007, and shall come into force on 1st May 2007.

(2) Subject to paragraph (3), these Regulations apply in relation to marine waters as defined in regulation 2.

(3) Regulations 32(1) and (2) apply to England and regulations 32(3) and (4) apply to Northern Ireland.

Interpretation

2.—(1) In these Regulations—

“the appropriate consultation bodies” means—

- (a) in relation to any dredging in the territorial sea adjacent to England, Natural England;
- (b) in relation to any dredging in marine waters in any other location in British waters, the Joint Nature Conservation Committee;
- (c) in relation to any dredging in Northern Ireland which would be likely to have significant effects on the environment in England, or which is likely to have a significant effect on a European site in England, the Secretary of State;

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- (a) S.I. 1988/785, S.I. 1992/2870. The National Assembly for Wales has been designated for the purposes of section 2(2) in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment by the European Communities (Designation) (No 3) Order 2000 (S.I. 2000/2812), amended by the European Communities (Designation) (Amendment) Order 2006 (S.I. 2006/3329) and, in relation to measures relating to the conservation of natural habitats and of wild fauna and flora, by the European Communities (Designation) Order 2002 (S.I. 2002/248), amended by the European Communities (Designation) (Amendment) Order 2006 (S.I. 2006/3329). The functions of the Secretary of State under section 2(2), were, so far as exercisable in relation to marine dredging in Scotland and the Scottish zone, transferred to Scottish Ministers by the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (S.I. 1999/1748), article 7.
- (b) 1972 c. 68. The enabling powers of section 2(2) of this Act were extended by virtue of the amendment of section 1(2) by section 2(5) of the European Economic Area Act 1993 (c. 51). Council Directive 85/337/EEC applies to the EEA by virtue of Article 74 of, and paragraph 1 of Part I of Annex XX to, the Agreement on the European Economic Area (Cm 2073). Council Directive 97/11/EC was extended to the EEA by Decision No 20/1999 of the EEA Joint Committee of 26th February 1999, OJ No L148, 22.06.00, p.45. Section 2(2) was modified in relation to its application to Scotland by paragraph 15 of Schedule 8 to the Scotland Act 1998 (c. 46).
- (c) 1973 c. 51, to which there are amendments which are not relevant to these Regulations.

- (d) in relation to any dredging in England which would be likely to have significant effects on the environment in Northern Ireland, or which is likely to have a significant effect on a European site in Northern Ireland, the Department of the Environment^(a);
- (e) in relation to any dredging which would be likely to have significant effects on the environment in Scotland or in the Scottish zone, or which is likely to have a significant effect on a European site in Scotland or the Scottish zone, Scottish Ministers;
- (f) in relation to any dredging which would be likely to have significant effects on the environment in Wales, or which is likely to have a significant effect on a European site in Wales, the National Assembly for Wales;
- (g) such other bodies as the regulator considers, by reason of their specific environmental responsibilities, to have an interest in a relevant project;

“British waters” means any marine waters that are not within Northern Ireland;

“by public advertisement”, in relation to a notice, means—

- (a) by publication of the notice in such national publication and in such local newspaper as the regulator considers appropriate; and
- (b) where the regulator maintains a website for the purpose of advertising of applications, by publication of the notice on the website;

“commencement” means the date on which these Regulations come into force;

“dredging” means the extraction of minerals by dredging in marine waters, but does not include—

- (a) such extraction where specifically authorised to be carried out by any enactment (including any enactment contained in a local Act or subordinate legislation) and in particular does not include—
 - (i) extraction authorised by an order under section 3 (orders as to inland waterways etc.) of the Transport and Works Act 1992^(b); and
 - (ii) extraction authorised by an order under section 1 (harbours orders) of the Harbours Act (Northern Ireland) 1970^(c);
- (b) dredging in any waters within the jurisdiction of a harbour authority, as defined by section 57 of the Harbours Act 1964^(d); or
- (c) extraction to which any of the following Regulations apply—
 - (i) the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999^(e);
 - (ii) the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999^(f);
 - (iii) the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999^(g),
 - (iv) the Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999^(h);

(a) Functions were transferred to the Department of the Environment by the Department of Housing, Local Government and Planning (Dissolution) (Northern Ireland) Order 1976 (S.I.1976/424 (N.I. 6), Article 3.

(b) 1992 c. 42.

(c) 1970 c. 1 (NI).

(d) 1964 c. 40.

(e) S.I. 1999/293, amended by S.I. 2000/2867 and S.I. 2006/3295.

(f) S.R. (NI) 1999 No 73.

(g) S.I. 1999/1783, amended by the Countryside and Rights of Way Act 2000 (c. 37), section 73(2); by S.I. 2005/1399 and by S.I. 2006/618.

(h) S.I. 1999/1672, amended by the Countryside and Rights of Way Act 2000, section 73(2) and by the Utilities Act 2000 (c.27), section 76(7).

(v) the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Impacts) Regulations 1999(a);

(vi) the Pipe-line Works (Environmental Impact Assessment) Regulations 2000(b); and where the context so requires, includes proposed dredging;

“the EIA Directive” means Directive 85/337/EEC(c) on the assessment of the effects of certain public and private projects on the environment;

“environmental statement” has the meaning given by regulation 7(1);

“European site” means any of the following located in the United Kingdom or in marine waters—

- (a) a special area of conservation;
- (b) a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive;
- (c) an area classified as a special protection area under Article 4(1) or (2) of the Wild Birds Directive;
- (d) a site which has been proposed by the Secretary of State, the Department of the Environment, Scottish Ministers or the National Assembly for Wales as a site eligible for designation as a special area of conservation for the purposes of meeting the United Kingdom’s obligations under Article 4(1) of the Habitats Directive, until such time as—
 - (i) it is included in the list of sites of Community importance referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive, or
 - (ii) agreement is reached under Article 4(2) of that Directive not to include the site in that list;

“habitats project” means any project for carrying out dredging in marine waters which is not directly connected with, or necessary to, the management of a European site and which is likely to have a significant effect (either alone or in combination with other plans or projects) on a European site;

“the Habitats Directive” means Council Directive 92/43/EEC(d) on the conservation of natural habitats and of wild fauna and flora;

“the holder”, in respect of a permission granted under these Regulations, means any person to whom the permission has been transferred, whilst the permission is vested in that person;

“marine waters” means—

- (a) tidal waters and parts of the sea adjacent to the United Kingdom from the mean high water springs up to the seaward limits of territorial waters; and
- (b) waters in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964(e) (designation of areas of continental shelf),

but does not include any waters in the Scottish zone, or any waters in Wales;

“Northern Ireland” has the meaning given by section 98(1) of the Northern Ireland Act 1998(f);

“notice” means notice in writing, and “notify” and cognate expressions shall be construed accordingly;

“owner”—

(a) S.I. 1999/360, amended by the Offshore Petroleum Production and Pipelines (Assessment of Environmental Impacts) (Amendment) Regulations 2007 (S.I. 2007/933).

(b) S.I. 2000/1928, amended by the Countryside and Rights of Way Act 2000, section 73(2).

(c) OJ No L175, 05.07.85, p. 40, amended by Directive 97/11/EC, OJ No L73, 14.03.97, p. 5 and Directive 2003/35/EC, OJ No L156, 25.06.03, p.17.

(d) OJ No L206, 22.07.92, p.7, to which there are amendments not relevant to these Regulations.

(e) 1964 c. 29. Section 1(7) was amended by the Oil and Gas (Enterprise) Act 1982 (c. 23), Schedule 3, paragraph 1.

(f) 1998 c. 47. *See also* the Adjacent Waters Boundaries (Northern Ireland) Order 2002 (S.I. 2002/791).

- (a) in relation to minerals situated in British waters in which there is a Crown interest or a Duchy interest (as defined in section 293 (preliminary definitions) of the Town and Country Planning Act 1990(a)) that is—
 - (i) an estate in fee simple, or
 - (ii) an interest that is, in the opinion of the regulator, equivalent to such an estate, means the appropriate authority as defined in that section;
- (b) in relation to minerals situated in Northern Ireland in which there is a Crown estate (as defined in article 118(1) of the Planning (Northern Ireland) Order 1991(b)) that is—
 - (i) an estate in fee simple, or
 - (ii) an interest that is, in the opinion of the regulator, equivalent to such an estate, means the appropriate authority as defined in that article;
- (c) in relation to minerals in which there is no such Crown interest, Duchy interest or Crown estate, means the person in whom the minerals are vested in fee simple or who, in the opinion of the regulator, has an interest in the minerals equivalent to an estate in fee simple;

“prospective applicant” means a person who intends to make an application under regulation 10 or under regulation 18;

“regulator”—

- (a) as regards dredging in British waters, means the Secretary of State;
- (b) as regards dredging in Northern Ireland, means the Department of the Environment;

“relevant project” means any project for carrying out dredging in marine waters which would be likely to have significant effects on the environment by virtue of factors such as its nature, size or location;

“Scotland” and “the Scottish zone” have the meanings given by section 126 of the Scotland Act 1998(c);

“the selection criteria” means the criteria set out in Schedule 2 to these Regulations;

“Wales” has the meaning given by section 155 of the Government of Wales Act 1998(d); and

“the Wild Birds Directive” means Council Directive 79/409/EEC(e) on the conservation of wild birds.

(2) Expressions used in these Regulations and in the EIA Directive or in the Habitats Directive have the same meaning for the purposes of these Regulations as in those Directives.

(3) Where these Regulations refer to—

- (a) an application or request which may be made by any person; or
- (b) an approval, decision, determination or opinion to be issued by the Secretary of State or by the regulator;

any such application or request shall be made and any such approval, decision, determination or opinion shall be issued in writing.

Application to the Crown

3.—(1) Subject to paragraph (2), these Regulations bind the Crown.

(2) No contravention by the Crown of any provision of these Regulations constituting a criminal offence shall make the Crown criminally liable, but the High Court may, on the application of any

(a) 1990 c. 8. Section 293 was amended by Schedule 3 to the Planning and Compulsory Purchase Act 2004 (c. 5).

(b) S.I. 1991/1220 (N.I.11).

(c) 1998 c. 46. *See also* the Scottish Adjacent Waters Boundaries Order 1999 (S.I. 1999/1126).

(d) 1998 c. 38. *See also* the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), to which there are amendments not relevant to these Regulations.

(e) OJ No L103, 25.04.79, p.1; to which there are amendments not relevant to these Regulations.

person appearing to the Court to have an interest, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in paragraph (2), these Regulations apply to a person in the public service of the Crown as they apply to any other person.

PART 2

RESTRICTIONS ON DREDGING

Restrictions on dredging

4. It shall be an offence for any person to carry out dredging except where the dredging—
- (a) falls within one of the cases described in regulation 5 (when these Regulations shall apply in relation to the dredging only to the extent specified in that regulation in relation to the particular case); or
 - (b) is carried out under and in accordance with a permission granted under Part 4 of these Regulations.

Partial application of the Regulations in particular cases

5.—(1) The cases mentioned in regulation 4(a) are those described in paragraphs (2), (8) and (9) of this regulation.

- (2) The first case is where the Secretary of State determines—
- (a) that the dredging constitutes or forms part of a project serving national defence purposes; and
 - (b) that in the opinion of the Secretary of State the application of these Regulations, except to the extent specified in paragraphs (5), (6), (8) or (9) of this regulation, as the case may be, would have an adverse effect on those purposes.
- (3) A determination under paragraph (2) of this regulation may be made by the Secretary of State—
- (a) on an application for the purpose from a prospective applicant;
 - (b) of the Secretary of State's own motion in the course of considering an application which has been made under regulation 6 or regulation 10; or
 - (c) on receiving a notification from the regulator under regulation 10(7).

(4) Where paragraph (2) applies, the regulator shall determine whether the dredging would constitute a habitats project.

(5) Where paragraph (2) applies and the regulator determines under paragraph (4) that the project would constitute a habitats project, then only the following provisions of these Regulations shall apply—

- (a) Parts 1 and 2;
- (b) regulation 10;
- (c) regulations 13 and 14;
- (d) regulations 16 to 24 and Schedule 3;
- (e) regulations 25 to 30; and
- (f) regulation 32.

(6) Where paragraph (2) applies and the regulator determines under paragraph (4) that the project would not constitute a habitats project, only the following provisions of these Regulations shall apply—

- (a) Parts 1 and 2;

- (b) regulation 26; and
- (c) regulation 30.

(7) As soon as practicable after making any determination under paragraph (2), the Secretary of State shall send a copy of it—

- (a) to the applicant for the determination, or to the applicant in respect of the application under regulation 6 or 10, as the case may be; and
- (b) where the dredging is proposed to be carried out in Northern Ireland, to the Department of the Environment.

(8) The second case is where the regulator has determined under regulation 6—

- (a) that the dredging does not constitute a relevant project; and
- (b) that the dredging does not constitute a habitats project;

and in such a case only the following provisions of these Regulations shall apply—

- (i) Parts 1 and 2;
- (ii) regulation 26; and
- (iii) regulation 30.

(9) Subject to paragraph (10), the third case is where the dredging continues to be carried out in accordance with a written agreement entered into by the owner before commencement, and in such a case only the following provisions of these Regulations shall apply—

- (a) Parts 1 and 2;
- (b) regulation 24 and Schedule 3;
- (c) regulation 26;
- (d) regulation 29; and
- (e) regulation 30.

(10) Where a written agreement entered into by the owner before commencement is varied on or after commencement, the dredging shall only fall within the third case where the regulator has determined, having regard to such of the selection criteria as are relevant, that dredging under the agreement as so varied does not constitute a relevant project (and Schedule 2 shall have effect to specify the selection criteria for the purposes of these Regulations).

PART 3

PRELIMINARY MATTERS

Preliminary determinations of the regulator

6.—(1) A person who proposes to carry out dredging may request the regulator's preliminary determination as to—

- (a) whether or not the dredging would constitute a relevant project; and
- (b) whether or not the dredging would constitute a habitats project..

(2) Before making a preliminary determination in response to a request under paragraph (1), the regulator shall consult—

- (a) the owner (if the owner is not the person requesting the determination); and
- (b) the appropriate consultation bodies.

(3) The regulator may ask the person making the request under paragraph (1) to supply such further information within such specified period and in such form as may reasonably be required.

(4) If the person making the request under paragraph (1) fails to supply the information requested within the specified period, or such further period as the regulator may allow, the request shall be deemed to be withdrawn.

(5) In making a preliminary determination in response to an application under paragraph (1)(a) the regulator shall take into account such of the selection criteria as are relevant in the particular case.

(6) As soon as reasonably practicable after making a preliminary determination, the regulator shall—

- (a) send a copy of it to the person making the request under paragraph (1) and to any persons consulted under paragraph (2); and
- (b) take such steps as the regulator considers appropriate to ensure that it is made available to the public concerned^(a).

Opinion of the regulator as to the content of the environmental statement

7.—(1) In these Regulations, “environmental statement” means a statement that includes—

- (a) at least the information set out in Part 1 of Schedule 1 to these Regulations; and
- (b) such of the information set out in Part 2 of that Schedule as is reasonably required to assess the environmental effects of the relevant project and which, having regard in particular to current knowledge and methods of assessment, the applicant can reasonably be required to compile;

and Schedule 1 shall have effect for these purposes.

(2) At the request of a prospective applicant, the regulator shall give an opinion as to the information to be provided by an environmental statement.

(3) Before giving an opinion, the regulator shall consult—

- (a) the prospective applicant;
- (b) the owner (if the owner is not the person requesting the opinion); and
- (c) the appropriate consultation bodies;

as to the information to be provided by the environmental statement.

(4) The regulator shall send a copy of an opinion given under this regulation to any person who has been consulted under paragraph (3).

Provision of information to facilitate preparation of environmental statement

8.—(1) A prospective applicant may, where the proposed application requires an environmental statement, give notice of an intention to submit an application to the regulator.

(2) A notice under paragraph (1) shall include the information necessary to identify the location and nature of the dredging, and shall indicate the main environmental consequences of the dredging which will be referred to in the prospective applicant’s environmental statement.

(3) On receipt of a notice under paragraph (1), the regulator shall—

- (a) notify the appropriate consultation bodies of the name and address of the prospective applicant and of the duty imposed on such consultation bodies by paragraph (4) to make information available to that person;
- (b) notify the prospective applicant of the names and addresses of the bodies notified under sub-paragraph (a); and
- (c) notify the prospective applicant of the name and address of each government department which may hold information which may be relevant to the preparation of the environmental statement.

(4) Subject to paragraph (5), any body notified under paragraph (3)(a) or government department notified to the prospective applicant under paragraph (3)(c), or the regulator, shall, if requested to do so by the prospective applicant, determine whether or not it has in its possession

(a) For “the public concerned”, see Article 1 of the EIA Directive.

any information relevant to the preparation of the environmental statement and, if it has, the body, department or the regulator shall make that information available to the prospective applicant.

(5) Paragraph (4) shall not require the disclosure of any information—

- (a) to which the Environmental Information Regulations 2004(a) apply, where the person holding it would be entitled to withhold it in response to a request made in accordance with those Regulations; or
- (b) which in any other case would be exempt information if a request for its disclosure were made in accordance with the Freedom of Information Act 2000(b).

(6) A reasonable charge reflecting the cost of making the relevant information available may be made by a body or any government department (other than the regulator who is responsible for deciding the application) which makes information available in accordance with paragraph (4).

Fees for preliminary matters

9.—(1) Where a request is made under regulation 7(2), or a notice is given under regulation 8(1), the prospective applicant shall pay to the regulator the fee determined in accordance with regulation 25, but where both a request is made and a notice is given in respect of the same application, only one such fee shall be payable.

(2) The regulator shall not be obliged to carry out any action in response to the request or notice until the fee has been paid.

PART 4

PERMISSIONS FOR DREDGING

Applications for permission

10.—(1) An application for permission to carry out dredging shall—

- (a) be made to the regulator;
- (b) contain such information as the regulator may reasonably require;
- (c) unless the dredging falls within one of the cases described in paragraphs (2) and (3), include an environmental statement;
- (d) where paragraph (2) applies, and the Secretary of State's determination relates to part only of the dredging, include an environmental statement in respect of any part of the dredging to which the determination does not apply; and
- (e) be accompanied by a fee determined in accordance with regulation 25.

(2) The first case is where the Secretary of State has determined under regulation 5(2) that the dredging constitutes or forms part of a project serving national defence purposes, and that in the opinion of the Secretary of State the application of these Regulations would have an adverse effect on those purposes.

(3) The second case is where the regulator has, within 12 months prior to the date of the application, determined in response to an application under regulation 6(1)(a) that the dredging does not constitute a relevant project.

(4) The regulator may require the applicant to supply such number of copies of the application as may reasonably be required, within such period as may reasonably be specified.

(5) Where the applicant fails, within such period as the regulator has specified, or such further period as the regulator may allow, to comply with any requirement of this regulation, the

(a) S.I. 2004/3391.

(b) 2000 c. 36, *see* specifically Part II of that Act.

application shall be deemed to be withdrawn at the end of such period, and the fee shall be refunded if the regulator has not yet published a notice under regulation 12(1).

(6) An application under this regulation may be withdrawn at any time by notice to the regulator, and the fee shall be refunded if, at the time when the regulator receives the notice of withdrawal, the regulator has not yet published a notice under regulation 12(1).

(7) Where the regulator receives an application under this regulation in respect of dredging in Northern Ireland which may constitute or form part of a project serving national defence purposes, the regulator shall provide a copy of that application to the Secretary of State.

Further information

11.—(1) Paragraph (2) applies where the regulator considers—

- (a) that the environmental statement fails to contain sufficient information of a description specified in any of the paragraphs of Part 2 of Schedule 1 to enable the environmental effects of the dredging to be fully considered; and
- (b) having regard in particular to current knowledge and methods of assessment, that the applicant can reasonably be required to supply further information of such description.

(2) Where this paragraph applies, the regulator shall request the applicant to supply such further information as the regulator considers necessary and shall notify the applicant of—

- (a) the number of copies of the further information that the applicant is required to supply; and
- (b) the period within which such further information shall be supplied.

(3) Where the applicant fails, within such period as the regulator has specified, or such further period as the regulator may allow, to comply with any request of the regulator under this regulation, the application shall be deemed to be withdrawn at the end of such period and the fee shall be refunded if the regulator has not yet published a notice under regulation 12(1).

Publicity and consultation

12.—(1) Where the regulator receives—

- (a) an application under regulation 10 which includes an environmental statement, or
- (b) further information supplied under regulation 11 or any other information provided by the applicant;

the regulator shall publish by public advertisement, as soon as reasonably practicable, a notice complying with the requirements of paragraph (2).

(2) The notice shall contain the following information—

- (a) the applicant's name;
- (b) a statement that the applicant has made an application or, as the case may be, supplied further information or other information, to the regulator under these Regulations;
- (c) a statement that the application is subject to an assessment of its effects on the environment under these Regulations;
- (d) the identity of the regulator responsible for taking a decision on the application under these Regulations and a statement that the application may either be granted, whether or not subject to conditions, or refused;
- (e) the address of the place in the United Kingdom at which copies of the application and any further or other information and any reports or advice which have been issued to the regulator at that time, as the case may be, may be inspected;
- (f) a statement that inspection of the application, any further or other information, and any reports or advice which have been issued to the regulator may be undertaken at that place, without charge, and at any reasonable time during a period which shall be not less than eight weeks beginning with the date on which the notice is published;

- (g) the address from which copies of the application and any further or other information and any reports or advice which have been issued to the regulator, may be obtained and, if a charge is made under paragraph (3) for the supply of copies, of the amount of the charge;
- (h) a statement that any person who wishes to make representations to the regulator regarding the application or regarding any further or other information or any reports or advice which have been issued to the regulator, may do so in writing within the period mentioned in sub-paragraph (f); and
- (i) the address in the United Kingdom to which representations may be sent.

(3) A reasonable charge may be made for the provision of copies of the application or any further or other information or any reports or advice which have been issued to the regulator, to any person who requests them.

(4) The regulator shall send to the appropriate consultation bodies and the owner (if the owner is not the applicant)—

- (a) a copy of the application and, as soon as reasonably practicable, of any further or other information and of any reports or advice that have been issued to the regulator; and
- (b) a statement—
 - (i) that representations may be made to the regulator regarding the application;
 - (ii) of the address in the United Kingdom to which representations may be sent; and
 - (iii) of the period, being not less than eight weeks beginning with the date on which notice of the application is first published in accordance with paragraph (1), within which representations may be made.

(5) Where the regulator is aware of any other person (including any non-governmental organisation promoting environmental protection in marine waters) who is likely to have an interest in the application, but is unlikely to become aware of it by means of the public advertisement, the regulator shall send a notice to such person containing the details set out in paragraph (2).

Decisions on applications

13.—(1) Before deciding whether to grant or to refuse permission on an application under regulation 10, the regulator shall determine whether or not the application relates to a project which constitutes a habitats project unless, within the 12 months prior to the submission of the application, a preliminary determination has been made in response to an application under regulation 6(1)(b) that the same project would not constitute a habitats project.

(2) The applicant shall provide such information as the regulator may reasonably require to enable the regulator to make the determination under paragraph (1).

(3) Before deciding whether to grant or to refuse permission for a project which the regulator has determined would constitute a habitats project (whether under this regulation or under regulation 6(1)(b)) the regulator shall make an appropriate assessment of the implications for the European site affected, in view of its conservation objectives and paragraph 2 of Schedule 3 shall apply for that purpose.

(4) Before deciding whether to grant or to refuse permission the regulator may give the opportunity of making representations (whether in person or in writing) to a person appointed by the regulator for that purpose, to the applicant, the owner (if the owner is not the applicant) and any other person whom the regulator considers should be given such an opportunity.

(5) In deciding whether to grant or to refuse permission the regulator shall take into consideration—

- (a) the information provided in the application;
- (b) the environmental statement, where one has been provided;
- (c) any further information supplied under regulation 11 and any other information submitted by the applicant;

- (d) any relevant representations made in response to the notice issued under regulation 12(1), or by anyone to whom a copy of the application has been sent under regulation 12(4) or to whom a notice has been sent under regulation 12(5);
- (e) any opinion forwarded to the Secretary of State under regulation 15(4);
- (f) any reports and advice that have been issued to the regulator;
- (g) the report of any person appointed under paragraph (4);
- (h) any published policy of the Secretary of State or a Northern Ireland Department^(a) whichever is applicable, in relation to the extraction of minerals by marine dredging either generally or in the region concerned; and
- (i) the results of any assessment carried out under paragraph (3).

(6) A grant of permission—

- (a) may be subject to such conditions as the regulator considers appropriate, including—
 - (i) conditions intended to implement any policy taken into account under paragraph (5)(h) which contains regional limits on the tonnage of minerals which may be dredged; and
 - (ii) conditions as to the fees, determined in accordance with regulation 25, to be paid in respect of the regulator's expenses incurred in assessing and interpreting the results of any monitoring of compliance with the conditions attached to the permission carried out in accordance with such conditions;
- and
- (b) shall be made to, and subject to any transfer under regulation 16, shall enure for the benefit of, the owner.

(7) The regulator shall send notice of the decision to—

- (a) the applicant;
- (b) the owner (if the owner is not the applicant);
- (c) any person who has made representations in respect of the application; and
- (d) the appropriate consultation bodies who were consulted under regulation 12(4);

and the notice shall state—

- (i) the main reasons for the decision;
- (ii) the main considerations on which the decision is based including, if relevant, information about the public participation process;
- (iii) where permission is granted, any conditions imposed under paragraph (6)(a), and, where applicable, the main measures to be taken to avoid, reduce and, if possible, offset any major adverse effects; and
- (iv) that the decision may be challenged and the procedures for doing so.

(8) Within the period of 28 days beginning with the date of the decision, the regulator shall publish, in the same or similar manner in which notice relevant to the application was published under regulation 12, a notice containing—

- (a) a statement that the regulator has granted or, as the case may be, refused permission;
- (b) a description of the dredging for which permission has been granted or, as the case may be, refused; and
- (c) the address in the United Kingdom at which any person may inspect a copy of the notice issued under paragraph (7).

^(a) A Northern Ireland Department means a Northern Ireland Department as specified by section 21 of the Northern Ireland Act 1998 (1998 c. 47).

Offences relating to applications and permissions

14.—(1) A person commits an offence who, for the purposes of obtaining (whether for that person or another) the grant of a permission under regulation 13—

- (a) makes a statement or representation, or furnishes a document or information, which that person knows to be false in a material particular, or
- (b) recklessly makes a statement or representation, or furnishes a document or information, which is false in a material particular.

(2) It shall be an offence for a person to fail to comply with a condition to which a permission is subject.

Projects likely to have significant effects on the environment in another EEA state

15.—(1) Where—

- (a) the Secretary of State is aware that a relevant project is likely to have significant effects on the environment in another EEA state; or
- (b) a request is made by another EEA state, whose territory is likely to be significantly affected by such a relevant project;

the Secretary of State shall, as soon as possible and not later than the date of publication of the notice referred to in regulation 12(1), carry out the actions specified in paragraph (2).

(2) The actions mentioned in paragraph (1) are that the Secretary of State shall—

- (a) send to the affected state—
 - (i) details of the location and nature of the dredging;
 - (ii) any available information on its potential effect on the environment in the affected state; and
 - (iii) a description of the nature of the decision which may be made under these Regulations.
- (b) give the affected state a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide; and
- (c) publish in the Gazette a notice containing the particulars mentioned in sub-paragraph (a) and indicating the address from which additional information may be obtained.

(3) Where an affected state indicates a desire to participate in the procedure for which these Regulations provide, the Secretary of State shall, as soon as possible, send to that affected state such of the following information as has not already been provided to it in accordance with paragraph (2)—

- (a) a copy of any application under regulation 10;
- (b) a copy of any further information supplied under regulation 11 or other information provided by the applicant;
- (c) a copy of any notice published under regulation 12(1);
- (d) copies of any reports and advice issued to the regulator; and
- (e) relevant information regarding the procedure under these Regulations.

(4) The Secretary of State shall also ensure that any bodies with specific environmental responsibilities who have been consulted by the affected state and the public concerned are given an opportunity, before any application is decided, to forward to the Secretary of State, within a reasonable time, their opinion on the particulars and information supplied.

(5) The Secretary of State shall—

- (a) enter into consultations with the affected state regarding, amongst other matters, the potential effects of the dredging on the environment of that affected state and the measures envisaged to reduce or eliminate such effects; and

- (b) determine, in agreement with the affected state, a reasonable period of time for the duration of the consultation period.

(6) Where the Secretary of State has consulted an affected state in accordance with paragraph (5) on the decision to be made on any application concerned, the Secretary of State shall inform that affected state of the decision and shall send to it a notice of the decision, and the notice shall state—

- (a) the main reasons for the decision;
- (b) the main considerations on which the decision is based, including, if relevant, information about the public participation process;
- (c) where permission is granted—
 - (i) any conditions imposed under regulation 13(6)(a); and
 - (ii) where applicable, the main measures to be taken to avoid, reduce and, if possible, offset any major adverse effects.

(7) Where dredging is proposed in Northern Ireland—

- (a) the regulator shall take such steps as are necessary to enable the Secretary of State to comply with the obligations of the Secretary of State under this regulation; and
- (b) the Secretary of State shall send to the regulator a copy of every opinion forwarded to the Secretary of State under paragraph (4).

(8) In this regulation, “Gazette” means—

- (a) in relation to an application relating to dredging in British waters, the London Gazette; and
- (b) in relation to an application relating to dredging in Northern Ireland, the Belfast Gazette.

PART 5

TRANSFER AND VARIATION OF PERMISSIONS

Transfer of permission

16.—(1) A permission granted under these Regulations shall not be transferred either in whole or in part to another person without the prior approval of the regulator and where any transfer is purported to be made without such consent the transfer shall be void.

(2) The regulator may, upon application from the owner or the holder, approve the transfer either unconditionally or subject to such conditions of transfer as the regulator considers appropriate.

(3) Where a permission is transferred, the owner shall—

- (a) remain liable for any breach of any condition to which the permission is subject, whenever the breach may arise;
- (b) shall continue to have such rights and obligations in relation to the permission as these Regulations provide.

(4) Any holder of a permission shall only be liable for breaches of any conditions, including any conditions of transfer, to which the permission is subject which arise whilst the holder is the holder of the permission.

(5) A holder of a permission shall not be liable for breaches of any conditions imposed to implement regional limits on the tonnages which may be dredged.

(6) Where a permission has been transferred with the regulator’s approval under paragraph (2), the transfer shall cease to have effect at the end of the period of 40 days beginning with the date of the transfer, or such further period as may be agreed by the regulator, unless the transferee notifies the regulator within that period—

- (a) that the whole or, as the case may be, part of the permission has been transferred to the transferee;
- (b) where the transfer is of part only, of the extent of the part transferred; and
- (c) of the date of the transfer.

Variation of permission

17.—(1) The regulator may decide to vary a permission granted under these Regulations, in whole or in part.

(2) The regulator may do so either—

- (a) on the application of a person mentioned in regulation 18(1); or
- (b) of the regulator’s own motion, in the circumstances provided for in regulation 21(1).

(3) Any variation may be made not only to the permission itself but also to any condition to which the permission was subject prior to the variation.

Variation of permission on application: preliminary determinations and fees

18.—(1) An application for variation may be made to the regulator—

- (a) where there has been a transfer of the whole of the permission under regulation 16, by the holder;
- (b) where there has been a transfer of part of the permission under regulation 16, and where the proposed variation is in respect of that part, by the holder;
- (c) where—
 - (i) a person (“a prospective transferee”) is considering entering into an agreement with the owner or holder for a transfer of the permission under regulation 16, either in whole or in part; and
 - (ii) the proposed variation relates to a part or the whole of the permission which is intended to be transferred;
 by the prospective transferee; and
- (d) in any other case, by the owner.

(2) An application under paragraph (1) (“a variation application”) shall, where the applicant is the holder or a prospective transferee (whether of the whole or part of the permission), be accompanied by a document signifying the owner’s consent in writing to the making of the application.

(3) Before deciding whether or not to grant a variation application, the regulator shall—

- (a) unless the dredging was determined to be a national defence project when permission was given for the dredging, determine, having regard to such of the selection criteria as are relevant to the proposed variation, whether or not the variation would constitute a relevant project; and
- (b) whether or not the variation would constitute a habitats project.

(4) Where, in order to make a determination under paragraph (3), the regulator considers it necessary, the regulator may ask the person making the variation application to supply such further information within such specified period and in such form as may reasonably be required.

(5) If the applicant fails to supply the information requested under paragraph (4) within the specified period or such further period as the regulator may allow, the application shall be deemed to be withdrawn.

(6) Before making a determination under paragraph (3), the regulator shall consult—

- (a) the owner (if the owner is not the applicant);
- (b) the applicant; and
- (c) the appropriate consultation bodies.

(7) As soon as is reasonably practicable after making a determination under paragraph (3), the regulator shall—

- (a) send a copy of it to the applicant, together with information about how the decision may be challenged ;
- (b) send a copy of it to any other persons consulted under paragraph (6); and
- (c) take such steps as the regulator considers appropriate to ensure that it is made available to the public concerned.

(8) At the same time as sending to the applicant the copy of the determination under paragraph (7) the regulator shall request payment of the appropriate fee determined under regulation 25.

(9) If the fee is not paid within such period as the regulator shall specify, or such further period as the regulator may allow, the variation application shall be deemed to be withdrawn.

Variation of permission on application: relevant projects and habitats projects

19.—(1) Where the regulator determines under regulation 18(3)(a) that a variation would constitute a relevant project—

- (a) the regulator shall request the applicant to supply an environmental statement within a specified period and shall not decide the variation application until the applicant has supplied one; and
- (b) the following provisions of these Regulations shall apply in relation to the variation application as they apply in relation to an application under regulation 10, as if references to deciding an application under paragraph (1) of that regulation and cognate expressions were references to deciding an application under regulation 18—
 - (i) regulations 7 and 8;
 - (ii) paragraphs (4), (5) and (6) of regulation 10;
 - (iii) regulations 11 and 12;
 - (iv) with the exception of paragraph (6)(b), regulation 13;
 - (v) regulations 14 and 15;
 - (vi) regulation 23;
 - (vii) regulations 25 to 27;
 - (viii) regulation 29; and
 - (ix) regulation 30.

(2) Where an environmental statement has been requested under paragraph (1)(a) and has not been supplied within the specified period, or such further period as the regulator may allow, the application shall be deemed to be withdrawn at the end of such period and the fee shall be refunded, provided that no advertisement under regulation 12(1), as applied by paragraph (1)(b), has been published at the date of withdrawal.

(3) Where the regulator determines under regulation 18(3)(b) that a variation would constitute a habitats project, the following provisions of these Regulations shall apply in relation to the variation application as they apply in relation to an application made under regulation 10, as if references to deciding an application under paragraph (1) of that regulation and cognate expressions were references to deciding an application under regulation 18—

- (a) regulations 13 and 14;
- (b) regulations 23 to 30.

Variation of permission on application: other cases

20.—(1) Where the regulator determines under regulation 18(3) that a variation would not constitute a relevant project, or a habitats project, this regulation applies—

- (a) to the application in respect of that variation; and

(b) to any subsequent application in respect of the same variation which is submitted to the regulator within 12 months of the date of the determination.

(2) Where reasonably necessary, the regulator may request the applicant to supply further information within such period and in such form as may reasonably be specified.

(3) Where the applicant fails, within such period as the regulator has specified, or such further period as the regulator may allow, to comply with any request of the regulator under paragraph(2), the variation application shall be deemed to be withdrawn and the fee shall be refunded, provided that, at the date of withdrawal, the regulator has not complied with the requirements of paragraph (4).

(4) The regulator shall send—

(a) a copy of the variation application and of any further information provided under paragraph (2); and

(b) a statement that representations may be made to the regulator regarding the application, and of the address in the United Kingdom to which representations may be sent, and of the period within which representations may be made, which shall be not less than 8 weeks beginning with the date on which the statement is sent;

to the persons referred to in paragraph (5).

(5) The persons mentioned in paragraph (4) are—

(a) the appropriate consultation bodies;

(b) the owner (if the owner is not the applicant); and

(c) any other person (including any non-governmental organisation promoting environmental protection in marine waters) who is likely to have an interest in the application or who the regulator considers is likely to be affected by the application.

(6) Before deciding whether to grant or refuse a variation application to which this regulation applies, the regulator may give the opportunity of making representations (whether in person or in writing) to a person appointed by the regulator for that purpose, to the applicant, the owner (if the owner is not the applicant) and any other person whom the regulator considers should be given such an opportunity.

(7) In deciding whether to grant or refuse a variation application to which this regulation applies, the regulator shall take into consideration—

(a) the information provided in the variation application;

(b) any further information supplied under paragraph (2) and any other information submitted by the applicant;

(c) any relevant representations made in response to the copies of the application supplied under paragraph (4);

(d) the report of any person appointed under paragraph (6); and

(e) any published policy of the Secretary of State or a Northern Ireland Department^(a), whichever is applicable, in relation to the extraction of minerals by marine dredging either generally or in the region concerned.

(8) The regulator may decide the variation application by either granting or refusing permission for the variation.

(9) A grant of permission for the variation may be subject to such conditions as the regulator considers appropriate, including—

(a) conditions intended to implement any policy taken into account under paragraph (7)(e) which contains regional limits on the tonnage of minerals which may be dredged; and

(b) conditions as to the fees, determined in accordance with regulation 25, to be paid in respect of the regulator's expenses incurred in interpreting and assessing the results of

(a) A Northern Ireland Department means a Northern Ireland Department as specified by section 21 of the Northern Ireland Act 1998 (1998 c. 47).

any monitoring of compliance with the conditions attached to the permission carried out in accordance with such conditions.

(10) The regulator shall send notice of the decision under paragraph (8) to the persons referred to in paragraph (5), and the notice shall state—

- (a) the main reasons for the decision;
- (b) the main considerations on which the decision is based including, if relevant, information about the public participation process;
- (c) where permission is granted—
 - (i) any conditions imposed under paragraph (9); and
 - (ii) where applicable, the main measures to be taken to avoid, reduce and, if possible, offset any major adverse effects; and
- (d) that the decision may be challenged and the procedures for doing so.

Revocation, suspension or variation of permission otherwise than on application

21.—(1) This regulation applies where—

- (a) a significant breach has occurred of any condition attached to the permission or to a transfer of the permission; or
- (b) in any other case the regulator considers it appropriate to exercise the powers conferred by this regulation, in order to protect the environment from significant adverse effects caused by the dredging authorised by the permission.

(2) Where this regulation applies, the regulator may—

- (a) revoke the permission;
- (b) suspend it; or
- (c) vary it in whole or in part, temporarily or permanently.

(3) Before revoking or permanently varying a permission under paragraph (2)—

- (a) the regulator shall serve notice of the proposed revocation or variation—
 - (i) on the persons listed in paragraph (4); and
 - (ii) in accordance with the provisions of paragraph (5);and

- (b) the regulator may request the owner or the holder of the permission, or of the part of the permission affected, as the case may be, to provide by a specified date, such additional information as may be required, in order that the regulator may establish the extent to which the proposed revocation or variation is likely to be effective to protect the environment from any significant adverse effects which would otherwise be caused by the dredging authorised by the permission (“the additional information”).

(4) The persons mentioned in paragraph (3)(a)(i) are—

- (a) the owner and any holder of the permission or the part affected, as the case may be;
- (b) the appropriate consultation bodies; and
- (c) any other person (including any non-governmental organisation promoting environmental protection in marine waters) who is likely to have an interest in the application or whom the regulator considers is likely to be affected by the revocation or variation.

(5) The notice mentioned in paragraph (3)(a)(ii) shall—

- (a) inform the recipients of the date when the proposed revocation or variation is intended to take effect under regulation 22; and
- (b) specify a period, being not less than 28 days from the date of the notice (“the specified period”), within which representations may be made about the proposed revocation or variation.

(6) The regulator shall publish a copy of the notice served under paragraph (3)(a) by public advertisement.

(7) Where the regulator considers that it is necessary for the dredging to cease or the permission to be varied as soon as possible, the permission shall be suspended or the proposed variation, as the case may be, shall take effect (for the time being and pending the regulator's decision under paragraph (11)) from the date on which the notice in accordance with paragraph (3)(a) is served on—

- (a) the holder of the permission, if any, or
- (b) if there is none, the owner.

(8) Where the regulator requests additional information under paragraph (3)(b), but the additional information is not provided by the date specified or within such further period as the regulator may allow, and the permission has not been suspended under paragraph (7), the permission shall be suspended.

(9) Where a permission has been suspended under paragraph (8)—

- (a) if the additional information is provided to the regulator's satisfaction within six months of the suspension, the suspension shall cease and the permission shall continue in effect;
- (b) if the additional information is not so provided, the permission shall be revoked by the regulator and the regulator shall send notice of the revocation to the persons listed in paragraph (4).

(10) If, within the specified period, a person on whom notice has been served under paragraph (3)(a), or a person who has made representations in response to the advertisement published under paragraph (6), so requests, the regulator may give—

- (a) to that person; and
- (b) to any other person on whom notice was served under paragraph (3)(a), or who has made representations in response to the advertisement published under paragraph (6);

an opportunity to make representations (whether in person or in writing) to a person appointed by the regulator for that purpose.

(11) The regulator shall decide whether to revoke the permission or vary it permanently, having regard, in particular, to—

- (a) any representations made in response to a notice served under paragraph (3)(a) or an advertisement published under paragraph (6); and
- (b) if applicable, the report of any person appointed under paragraph (10).

(12) The regulator shall serve notice of the decision under paragraph (11) on any person on whom notice was served under paragraph (3)(a) and on any person who made representations in response to the advertisement published under paragraph (6), and the notice shall state—

- (a) the main reasons for the decision;
- (b) the main considerations on which the decision is based, including, if relevant, information about the public participation process; and
- (c) that the decision may be challenged and the procedures for doing so.

Consequences of revocation, suspension or variation

22.—(1) A revocation or variation under regulation 21(2) shall take effect, subject to paragraph (2), on the date on which notice is served under regulation 21(12).

(2) Where more than one notice is served under regulation 21(12) in respect of the same revocation or variation and those notices are served on different days, the revocation or variation shall take effect on the date on which the last of them is served.

(3) Where a permission has been suspended, or a variation has taken effect temporarily, in the circumstances described in regulation 21(7), but the regulator's final decision under regulation 21(11) is not to revoke the permission or to vary it permanently, the permission shall again have

effect, or have effect on the terms effective prior to the temporary variation, as the case may be, from the date of the notice served under regulation 21(12).

(4) In relation to a permission which has been suspended under regulation 21(7) or regulation 21(8), which continues in effect under regulation 21(9)(a) or which the regulator has decided under regulation 21(11) not to revoke—

- (a) any period specified in the permission for the taking of any action, which expires after the date on which the permission was suspended, shall be treated as extended by a period equal to that during which the permission was suspended; and
- (b) where a permission requires anything to be done by a specified date, which falls after the date upon which the permission was suspended, that specified date shall be postponed by a period equal to that during which the permission was suspended.

(5) In relation to a permission which was varied temporarily under regulation 21(8), which the regulator has decided under regulation 21(11) not to vary permanently—

- (a) any period specified in the permission for the taking of any action, which expires after the date on which the permission was varied temporarily under paragraph (3) shall, if the action relates to matters which are affected by the temporary variation, be treated as extended by a period equal to that during which the permission had effect as varied; and
- (b) where a permission requires any action to be taken by a specified date which falls after the date on which the permission was varied temporarily, the specified date shall, if the action relates to matters which are affected by the temporary variation, be postponed by a period equal to that during which the permission had effect as varied.

(6) The revocation or variation of a permission under regulation 21(2), the suspension of a permission under regulation 21(7) or 21(8), or the temporary variation of a permission under regulation 21(7), shall not affect anything done under the permission before the date on which the permission was revoked, varied, suspended or temporarily varied, as the case may be.

Offences relating to transfers and variations

23.—(1) A person commits an offence who, for the purposes of obtaining (whether for that person or another) a transfer of a permission under regulation 16 or a variation of a permission under regulation 17, or in response to a request under regulation 21(3)(b)—

- (a) makes a statement or representation, or furnishes a document or information, which that person knows to be false in a material particular, or
- (b) recklessly makes a statement or representation, or furnishes a document or information, which is false in a material particular.

(2) It shall be an offence for a person to fail to comply with any condition of transfer.

(3) While a permission is suspended under regulation 21(7) or regulation 21(8), any continued or further dredging under the permission shall be an offence.

PART 6

NATURAL HABITATS

Protection of natural habitats

24. Schedule 3 to these Regulations has effect in relation to dredging in British waters and Northern Ireland.

PART 7

GENERAL

Fees

- 25.**—(1) Subject to paragraph (3) the regulator shall determine the fees to be paid—
- (a) by a prospective applicant in respect of the expenses of the regulator of carrying out either or both of the activities described in paragraph (2);
 - (b) by an applicant in respect of the expenses of the regulator of considering, publicising and deciding whether to grant or to refuse any application under regulation 10(1) or regulation 18(1);
 - (c) by the owner or holder of any permission in respect of the expenses of the regulator of interpreting and assessing the results of any monitoring which is provided for by the conditions attached to the permission—
 - (i) of the manner in which the dredging permitted by that permission is being or has been carried out; and
 - (ii) of the effects of that dredging;by, in particular, scrutiny of electronic or written information including surveys.
- (2) The activities mentioned in paragraph (1)(a) are—
- (a) providing an opinion under regulation 7(2); and
 - (b) providing the information relevant to the preparation of the environmental statement in accordance with regulations 8(3) and 8(4).
- (3) Fees under this section shall be determined—
- (a) as regards dredging in British waters, by the regulator with the consent of the Treasury; and
 - (b) as regards dredging in Northern Ireland, by the regulator with the consent of the Department of Finance and Personnel;

after consultation on the principles to be applied in determining the fees and the amounts of the fees with organisations appearing to the regulator to represent persons who are likely to apply for permissions.

Register

- 26.**—(1) The regulator shall keep a register containing the information specified in paragraph (2).
- (2) The register shall contain a copy, either in photographic or electronic form or both, of—
- (a) each determination made by the Secretary of State under regulation 5(2);
 - (b) each determination made by the regulator under regulation 5(4);
 - (c) each application for a preliminary determination under regulation 6(1);
 - (d) each preliminary determination made by the regulator in response to an application under regulation 6(1);
 - (e) each opinion given by the regulator under regulation 7(2);
 - (f) each application for permission to carry out dredging made to the regulator under regulation 10(1), including any environmental statement, and any accompanying plans and drawings;
 - (g) any further information supplied in response to a request under regulation 11(2), or any other information supplied by the applicant;
 - (h) each notice published under regulation 12(1);

- (i) any reports and advice which are issued to the regulator in relation to any application under these Regulations;
- (j) each determination made by the regulator under regulation 13(1);
- (k) any information supplied by an applicant under regulation 13(2);
- (l) each decision of the regulator in relation to an application under regulation 13(6), including a copy of the report of any person appointed under regulation 13(4) in respect of the application, details of any conditions subject to which permission was granted and the date of the decision;
- (m) each approval of a transfer given under regulation 16(2), including a copy of any conditions subject to which the approval was given;
- (n) each application for a variation of a permission made under regulation 18(1);
- (o) any information provided by the applicant, or decision, determination or opinion of the regulator in relation to an application to vary a permission to carry out dredging, under any regulation which is applied to an application under regulation 18(1) by regulation 19(1)(b) or regulation 19(3);
- (p) each determination made by the regulator under regulation 18(3);
- (q) any information provided by an applicant for a variation under regulation 20(2);
- (r) each decision made by the regulator under regulation 20(8) in relation to a proposed variation, including a copy of the report of any person appointed under regulation 20(6) in respect of the application, details of any conditions subject to which the variation was granted and the date of the decision;
- (s) each notice served by the regulator under regulation 21(3)(a);
- (t) any information provided by the owner or holder of a permission in response to a request under regulation 21(3)(b);
- (u) the report of any person appointed under regulation 21(10);
- (v) each decision made by the regulator under regulation 21(11);
- (w) each notice served by the regulator under regulation 21(12);
- (x) the order of any court in any legal proceedings in respect of an offence under these Regulations;
- (y) any information supplied by an applicant under paragraph 2(2) of Schedule 3;
- (z) any information provided by the owner or holder of a permission under paragraph 3(4) of Schedule 3;
- (aa) each decision made by the regulator to affirm, revoke or vary a permission under paragraph 3(5) of Schedule 3;
- (bb) each notice served by the regulator under paragraph 4(1) of Schedule 3;
- (cc) each notice served by the regulator under paragraph 5(1) or (5) of Schedule 3;
- (dd) each decision made by the regulator in respect of a review under paragraph 5(4) of Schedule 3, including a copy of the report of any person appointed under paragraph 5(3) of that Schedule in respect of the review, and the date of the decision;
- (ee) any statement of reasons accompanying any of the above;
- (ff) any monitoring scheme, report or other information submitted to the regulator under a condition to which permission to carry out dredging, or consent to a transfer of a permission under regulation 16, was made subject;
- (gg) any representation made or information provided to the regulator by any person or body, and in particular another regulator, an EEA state, the National Assembly for Wales or Scottish Ministers, in connection with any function performed or to be performed by the regulator under these Regulations; and

(hh) the order of any court in any legal proceedings in which the validity of any approval, decision, determination, opinion or other action of the regulator under these Regulations was questioned.

(3) The register shall include an index.

(4) The register shall be available for inspection by the public at all reasonable hours, by prior appointment.

(5) Where the register is kept using electronic storage, the regulator may also make the register available for inspection by the public on a website maintained by the regulator for that purpose.

(6) On request by any member of the public and on payment of a reasonable fee, the regulator shall provide a copy of any document entered on the register.

(7) Except where paragraph (8) applies, an entry in the register shall be made within 28 days of—

- (a) the receipt by the regulator of any application, representation, information, scheme, report or order;
- (b) the giving or making of the relevant approval, decision, determination or opinion, or the issuing of the relevant notice.

(8) Where the regulator is of the view that making an entry in the register in accordance with paragraph (7) may prejudice the fairness or speed of the process of the giving or making of any approval, decision, determination or opinion under these Regulations, the entry shall be made as soon as practicable after the approval, decision, determination or opinion has been made or given.

Penalties

27.—(1) A person who commits an offence under these Regulations shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on indictment, to a fine.

(2) Where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to, neglect on the part of an officer, that person, as well as the body corporate, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(3) In this regulation, “officer”, in relation to a body corporate means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body or a person purporting to act in that capacity.

(4) For the purposes of paragraph (3), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(5) Proceedings for an offence alleged to have been committed under these Regulations by an unincorporated body are to be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if that body were a corporation.

(6) Proceedings for an offence under this regulation may be taken, and the offence may for all incidental purposes be treated as having been committed—

- (a) in relation to dredging in British waters, in any place in England; and
- (b) in relation to dredging in Northern Ireland, in any place in Northern Ireland.

(7) Proceedings for a declaration under regulation 3(2) may be taken, and the contravention which is complained of may for all incidental purposes be treated as having been committed—

- (a) in relation to dredging in British waters, in any part of England; and
- (b) in relation to dredging in Northern Ireland, in any part of Northern Ireland.

Territorial Waters Jurisdiction Act 1878

28. Section 3 of the Territorial Waters Jurisdiction Act 1878^(a) (consents to prosecutions of offences committed on the open sea by persons who are not British citizens) does not apply to any proceedings for an offence under these Regulations.

Local inquiries

29.—(1) The regulator may cause a local inquiry to be held for the purposes of the exercise of any function of the regulator under these Regulations.

(2) In relation to a local inquiry held under these Regulations in respect of dredging in British waters, subsections (2) to (5) of section 25 (power to direct inquiries) of the Local Government Act 1972^(b) shall apply—

- (a) as they apply in relation to local inquiries held under that Act;
- (b) with the deletion of the words “local authority or” from subsection (4) (provisions as to Secretary of State’s costs of holding inquiries); and
- (c) as if references in subsections (4) and (5) (provisions as to orders for the payment of costs of parties to inquiries) to the Minister, were references to the regulator.

(3) As regards dredging in Northern Ireland, Schedule A1 to the Interpretation Act (Northern Ireland) 1954 shall apply in relation to a local inquiry held under these Regulations instead of paragraph (2) of this regulation, as it applies in relation to a local inquiry held under an enactment passed or made as mentioned in section 23 (inquiries and investigations) of that Act^(c).

Electronic communications

30.—(1) A requirement in these Regulations that any application, approval, decision, determination, notice, opinion or request should be in writing is fulfilled where the recipient consents to receive it electronically and the document meets the criteria in paragraph (4), and “written” is to be construed accordingly.

(2) Where an application is made to the Secretary of State or to the regulator for any approval, decision, determination, or opinion, under these Regulations using electronic communications, the person making the application shall be taken to have agreed—

- (a) to the use of such communications for all purposes relating to the application which are capable of being carried out electronically;
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the application; and
- (c) that the deemed agreement under this paragraph shall subsist until that person gives notice to revoke the agreement.

(3) Where a person is no longer willing to accept the use of electronic communications in relation to any application under these Regulations, that person shall give notice to the regulator and such revocation shall be final and shall take effect on a date specified by the person in the notice, but not less than seven days after the date on which the notice is given.

(4) The criteria referred to in paragraph (1) are that the document transmitted by the electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(a) 1878 c. 73.

(b) 1972 c. 70. Subsection (2) was amended by the Statute Law (Repeals) Act 1989 (c. 43). Subsection (3) was amended by sections 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48). Subsection (4) was amended by the Housing and Planning Act 1986 (c. 63), section 49(2), and Schedule 12, Part III.

(c) 1954 c. 33 (N.I.). Section 23 was amended and Schedule A1 was inserted by section 47 of the Inquiries Act 2005 (c. 12).

(5) In paragraph (4), “legible in all material respects” means that the information contained in the document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(6) Nothing in this regulation shall prevent the regulator from requiring an applicant for permission under regulation 10 or the applicant in relation to any application under regulations 6(1), 7(2), 16(2), or 18(1) or the owner or holder of a permission in the case of a proposed revocation or variation under regulation 21, to provide such number of printed copies of any document as the regulator shall reasonably require, notwithstanding that the document has already been transmitted to the regulator electronically.

(7) Where the electronic communication is received by the recipient outside the recipient’s business hours, it shall be taken to have been received on the next working day; and for this purpose “working day” means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.

(8) In this regulation—

- (a) the expression “address” includes any number or address used for the purpose of such communications or storage; and
- (b) “electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(a).

Transitional provisions

31.—(1) An application under either of the procedures mentioned in paragraph (3) or (4) which remains undetermined at commencement shall (unless withdrawn) be treated as an application for permission or, as the case may be, variation duly made under these Regulations if—

- (a) it includes an environmental statement; or
- (b) an environmental statement is supplied to the regulator in respect of it within the period of 14 days from commencement.

(2) Steps taken in accordance with those procedures in relation to an application that is treated as mentioned in paragraph (1) shall be treated as steps taken under regulation 12, to the extent that the regulator is satisfied that the steps as taken by the applicant publicise that application to substantially the same extent as an application would have been publicised by the regulator under regulation 12.

(3) The procedures referred to in paragraph (1) in relation to an application for permission to carry out dredging in British waters are those set out in—

- (a) the document entitled “Offshore Dredging for Sand, Gravel and Other Minerals”, dated April 1989, and published by the Department of the Environment and the Welsh Office; and
- (b) the document entitled “Government View: New Arrangements for the Licensing of Minerals Dredging”, dated May 1998, and published by the Department of the Environment, Transport and the Regions and the Welsh Office.

(4) The procedures referred to in paragraph (1) in relation to an application for permission to carry out dredging in Northern Ireland are those set out in paragraph (3)(b), as modified in the document entitled “Government View: Interim Arrangements for the Licensing of Marine Minerals Dredging in Northern Ireland”, dated May 2006, and published by the Department of the Environment.

(5) Where a permission is granted or varied as a result of any application to which this regulation applies, these Regulations shall apply to it as they do to permissions granted as a result of an application under regulation 10.

(a) 2000 c. 7. Section 15 was amended by the Communications Act 2003 (c. 21), Schedule 17, paragraph 158.

Amendments of Regulations, and savings

32.—(1) In Schedule 2 to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999(a), in column 1 of the table, in paragraph 2(c), after “fluvial” insert “or marine”.

(2) The amendment made by paragraph (1) shall not have effect in relation to—

- (a) any application for planning permission, or for the amendment of an existing planning permission lodged or received by a local planning authority before commencement;
- (b) any appeal in relation to such an application;
- (c) any matter in relation to which, before commencement, a local planning authority has issued an enforcement notice under section 172 (issue of enforcement notice) of the Town and Country Planning Act 1990(b); or
- (d) any development begun before commencement in reliance on planning permission granted by the Town and Country Planning (General Permitted Development) Order 1995(c).

(3) In Schedule 2 to the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999(d) in Schedule 2, in column 1 of the table, in paragraph 2(c), after “fluvial” insert “or marine”.

(4) The amendment made by paragraph (3) shall not have effect in relation to—

- (a) any application for planning permission lodged or received by the Department of the Environment before commencement;
- (b) any appeal in relation to such an application;
- (c) any matter in relation to which, before that date, the Department has issued an enforcement notice under article 68 of the Planning (Northern Ireland) Order 1991(e); or
- (d) any development begun before that date in reliance on planning permission granted by the Planning (General Development) Order (Northern Ireland) 1993(f).

Signed by authority of the Secretary of State for Communities and Local Government

Kay Andrews

Parliamentary Under Secretary of State

Department for Communities and Local Government

28th March 2007

We consent

Claire Ward

Alan Campbell

27th March 2007

Two of the Lords Commissioners of Her Majesty's Treasury

(a) S.I. 1999/293, amended by S.I. 2000/2867 and S.I. 2006/3295.

(b) 1990 c. 8. Section 172 was substituted by the Planning and Compensation Act 1991 (c. 34), section 5.

(c) S.I. 1995/418; relevant amending instruments are S.I. 1996/528, and 2002/828.

(d) S.R. (NI) 1999 No 73.

(e) S.I. 1991/1220 (N.I. 11).

(f) S.R. (NI) 1993 No 278, amended by S.R. (NI) 1998 No 222, S.R. (NI) 1999 No 73, S.R. (NI) 2000 No 113 and S.R. (NI) 2002 No 195.

ENVIRONMENTAL STATEMENTS

PART 1

MINIMUM REQUIREMENTS

1. A description of the project comprising information on the site, design and size of the project.
2. A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.
3. The data required to identify and assess the main effects which the project is likely to have on the environment.
4. An outline of the main alternatives studied by the applicant and an indication of the main reasons for the applicant's choice, taking into account the environmental effects.
5. A non-technical summary of the information provided under paragraphs 1 to 4 of this Part.

PART 2

ADDITIONAL REQUIREMENTS

1. A description of the project, including in particular—
 - (a) a description of the physical characteristics of the whole project and the land-use requirements during the construction and operational phases;
 - (b) a description of the main characteristics of the production processes, for instance nature and quantity of the materials used;
 - (c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed project.
2. An outline of the main alternatives studied by the applicant and an indication of the main reasons for this choice, taking into account the environmental effects.
3. A description of the aspects of the environment likely to be significantly affected by the proposed project including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.
4. A description of the likely significant effects of the proposed project on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project, resulting from:
 - (a) the existence of the project;
 - (b) the use of natural resources;
 - (c) the emission of pollutants, the creation of nuisances and the elimination of waste,and a description by the applicant of the forecasting methods used to assess the effects on the environment.
5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.
6. A non-technical summary of the information provided under paragraphs 1 to 5 of this Part.

7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information.

SCHEDULE 2

Regulation 5(10)

SELECTION CRITERIA

Characteristics of projects

1. The characteristics of projects must be considered having regard, in particular, to—
 - (a) the size of the project;
 - (b) the cumulation with other projects;
 - (c) the use of natural resources;
 - (d) the production of waste;
 - (e) pollution and nuisances;
 - (f) the risk of accidents, having regard in particular to substances or technologies used.

Location of projects

2. The environmental sensitivity of geographical areas likely to be affected by projects must be considered, having regard, in particular, to—
 - (a) the existing land use;
 - (b) the relative abundance, quality and regenerative capacity of natural resources in the area;
 - (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
 - (i) wetlands;
 - (ii) coastal zones;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under EEA states' legislation; special protection areas designated by Member States under the Wild Birds Directive or the Habitats Directive;
 - (vi) areas in which the environmental quality standards laid down in Community legislation have already been exceeded;
 - (vii) densely populated areas;
 - (viii) landscapes of historical, cultural or archaeological significance.

Characteristics of the potential impact

3. The potential significant effects of projects must be considered in relation to criteria set out under paragraphs 1 and 2 above, and having regard in particular to—
 - (a) the extent of the impact (geographical area and size of the affected population);
 - (b) the transfrontier nature of the impact;
 - (c) the magnitude and complexity of the impact;
 - (d) the probability of the impact;
 - (e) the duration, frequency and reversibility of the impact.

NATURAL HABITATS

Definitions

1.—(1) In this Schedule, “Natura 2000” means the European network of special areas of conservation, and special protection areas classified under the Wild Birds Directive, provided for by Article 3(1) of the Habitats Directive.

(2) For the purposes of paragraphs 3 and 4 of this Schedule, the definition of “European site” in regulation 2 shall be extended by the insertion of the following paragraph—

“(e) a site hosting a priority natural habitat type or priority species in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive, during the consultation period or pending a decision of the Council under Article 5(3).”

Provision for the protection of European sites: new dredging projects

2.—(1) This paragraph applies in relation to every project in respect of which the regulator has determined under regulation 6, regulation 13(1) or regulation 18(3) that it would constitute a habitats project.

(2) A person applying under regulation 10, or under regulation 18, shall provide such information as the regulator may reasonably require for the purposes of the assessment under regulation 13(3) or that regulation as applied by regulation 19(3).

(3) For the purposes of the assessment, the regulator shall take appropriate scientific advice.

(4) The regulator may also take appropriate steps to obtain the opinion of the public for the purposes of the assessment.

(5) In the light of the conclusion of the assessment, and subject to sub-paragraphs (7) and (8) below, the regulator shall grant permission for the project only after having ascertained that it will not, either alone or in combination with other plans or projects, adversely affect the integrity of the European site.

(6) In considering whether a project will adversely affect the integrity of the site, the regulator shall have regard to—

- (a) the manner in which it is proposed to be carried out; and
- (b) any conditions or restrictions subject to which it is proposed that the permission should be granted.

(7) Where the regulator considers that any adverse effects of the project on the integrity of a European site would be avoided if the permission were subject to conditions, permission shall only be granted subject to those conditions.

(8) If the regulator is satisfied that, there being no alternative solutions, the project must be carried out for imperative reasons of overriding public interest (which, subject to sub-paragraph (9), may be of a social or economic nature), permission may be granted for the project notwithstanding a negative assessment of the implications for the site.

(9) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in sub-paragraph (8) must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
- (b) other reasons of overriding public interest, provided the regulator has had due regard to the opinion of the European Commission in concluding that there are such reasons.

Provision for the protection of European sites: review of existing permissions

3.—(1) Where—

(a) before the date on which a site becomes a European site, the regulator has granted permission under these Regulations for a project which the regulator considers would have constituted a habitats project, had the European site been designated at the date when the application for the permission was determined; and

(b) none of the circumstances mentioned in sub-paragraph (2) apply;

the regulator shall, as soon as reasonably practicable after the date on which the site becomes a European site, review the permission.

(2) The circumstances referred to in sub-paragraph (1)(b) are—

(a) the dredging to which the permission relates has been completed before the site became a European site;

(b) the permission was granted subject to a condition as to the period within which the dredging to which it relates was to be begun and that period has expired without the dredging having been begun, and the permission is no longer capable of implementation without being varied by the regulator; and

(c) the permission was granted for a limited period and that period has expired.

(3) The regulator shall, for the purpose of reviewing the permission, make an appropriate assessment of the implications of the dredging for the site in view of its conservation objectives; and the provisions of sub-paragraphs (3), (4), (5) and (6) of paragraph 2 shall apply, with appropriate modifications, in relation to such a review.

(4) Where a permission is reviewed under this regulation, the regulator may request the owner or the holder of the permission, as the case may be, to provide, within a specified period, any additional information which the regulator requires in order to carry out the review and if that information is not provided within the period specified, or such further period as the regulator may allow, the regulator may revoke the permission without completing the review.

(5) Having reviewed a permission under this paragraph, the regulator shall—

(a) affirm or vary it in accordance with sub-paragraph (6), (7) or (8); or

(b) in any other case revoke it.

(6) The permission may be affirmed if the regulator is satisfied that the project will not adversely affect the integrity of the European site.

(7) The permission may be varied if the regulator is satisfied that any adverse effects on the integrity of the European site of the carrying out or, as the case may be, the continuation of the project, would be avoided by a variation of the permission.

(8) Subject to sub-paragraph (10), if the regulator is satisfied that, there being no alternative solutions, the project must be carried out for imperative reasons of overriding public interest (which, except in cases to which sub-paragraph (9) applies, may be of a social or economic nature), the permission may be affirmed, notwithstanding a negative assessment of the implications for the site.

(9) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in sub-paragraph (8) must be—

(a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or

(b) other reasons of overriding public interest, provided the regulator has had due regard to the opinion of the European Commission in concluding that there are such reasons.

(10) The regulator shall not affirm a permission under sub-paragraph (8) in any case where sub-paragraph (6) or (7) applies.

(11) Nothing in this paragraph shall affect anything done under the permission before the date on which the site became a European site.

Provision for the protection of European sites: review of existing agreements

4.—(1) As soon as reasonably practicable after commencement, the regulator shall serve on the parties to each agreement to which sub-paragraph (2) applies, a notice specifying a date for the purposes of sub-paragraph (5).

(2) This sub-paragraph applies to any written agreement—

- (a) entered into by an owner before commencement; and
- (b) which the regulator considers relates to dredging which constitutes a habitats project.

(3) As soon as reasonably practicable after a site becomes a European site, the regulator shall serve on the parties to each agreement to which sub-paragraph (4) applies, a notice specifying a date for the purposes of sub-paragraph (5).

(4) This sub-paragraph applies to any agreement—

- (a) entered into by an owner before commencement; and
- (b) which the regulator considers relates to dredging which constitutes a habitats project as a result of the designation of the European site.

(5) On and after the date specified in a notice under sub-paragraph (1) or sub-paragraph (3), the agreement shall have effect for all purposes as a permission granted as a result of an application under regulation 10 and which it is the regulator's duty to review under paragraph 3.

Procedure on review

5.—(1) Where, on a review under paragraph 3 or 4, the regulator decides to revoke or vary a permission granted, or having effect as if granted, under these Regulations, the regulator shall serve notice on—

- (a) the owner,
- (b) any holder of the permission, or the part affected, as the case may be, and
- (c) any other person who, in the regulator's opinion, will be affected by the revocation or variation,

informing them of the decision and specifying a period, being not less than 28 days from the date of the notice ("the specified period"), within which representations may be made in relation to that decision.

(2) The regulator shall also serve notice on any person or body from which scientific advice was obtained, informing them of the decision and inviting their representations within the specified period.

(3) If, within the specified period, a person on whom notice has been served under sub-paragraph (1) so requires, the regulator shall, before deciding whether to proceed with the revocation or variation, give—

- (a) to that person; and
- (b) to any other person or body on whom notice was served under that sub-paragraph or sub-paragraph (2),

an opportunity to make representations (whether in person or in writing) to a person appointed by the regulator for the purpose.

(4) The regulator shall decide, having regard, in particular, to—

- (a) any representations made in response to a notice served under sub-paragraph (1) or (2); and
- (b) if applicable, the report of any person appointed under sub-paragraph (3),

whether to proceed with the revocation or variation of the permission.

(5) The regulator shall serve on any person on whom notice was served under—

- (a) sub-paragraph (1), or
- (b) sub-paragraph (2),

notice of the decision under sub-paragraph (4) stating—

- (i) the main reasons for the decision;
- (ii) the main considerations on which the decision is based; and
- (iii) that the decision may be challenged and the procedures for doing so.

Effect of regulator's decision on review

6.—(1) Where the regulator has decided, under paragraph 5(1), to revoke or vary a permission granted, or having effect as if granted, under these Regulations, the permission shall be suspended or the variation shall take effect temporarily, as the case may be, subject to sub-paragraph (2), on the date on which notice is served under paragraph 5(1).

(2) Where more than one notice is served under paragraph 5(1) in respect of the same revocation or variation, and those notices are served on different days, the suspension or temporary variation shall take effect on the date on which the last of them is served.

(3) Where the regulator decides not to proceed with the revocation or variation of the permission under paragraph 5(4), it shall again have effect, or have effect on the terms on which that permission was effective prior to the temporary variation, as the case may be, from the date of the regulator's decision not so to proceed.

(4) In relation to a permission to which sub-paragraph (3) applies—

(a) where the regulator has decided not to revoke the permission—

- (i) any period specified in the permission for the taking of any action, which expires after the date on which the permission was suspended under sub-paragraph (1) or sub-paragraph (2), shall be treated as extended by a period equal to that during which the permission was suspended; and
- (ii) where a permission requires anything to be done by a specified date, which falls after the date upon which the permission was suspended, the specified date shall be postponed by a period equal to that during which the permission was suspended;

(b) where the regulator has decided not to vary the permission—

- (i) any period specified in the permission for the taking of any action, which expires after the date on which the permission was varied temporarily under sub-paragraph (1) or sub-paragraph (2), shall, if the action relates to matters which are affected by the temporary variation, be treated as extended by a period equal to that during which the permission had effect as varied; and
- (ii) where a permission requires any action to be taken by a specified date which falls after the date on which the permission was varied temporarily, the specified date shall, if the action relates to matters which are affected by the temporary variation, be postponed by a period equal to that during which the permission had effect as varied.

(5) A revocation or variation under paragraph 5(1), or the suspension or temporary variation of a permission under sub-paragraph (1), shall not affect anything done under the permission before the date determined in accordance with that sub-paragraph or, as the case may be, sub-paragraph (2).

Compensatory measures

7. Where—

- (a) a project is granted permission, notwithstanding a negative assessment of the implications for a European site; or
- (b) a permission is affirmed on review, notwithstanding such an assessment;

the regulator shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected and shall ensure that the European Commission is informed of the compensatory measures taken.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, in waters around the United Kingdom (but excluding Welsh territorial waters and most waters around Scotland) referred to in the Regulations as “marine waters”:

Council Directive 85/337/EEC (OJ No L175, 05.07.85, p.40) on the assessment of the effects of certain public and private projects on the environment (as amended by Directive 97/11/EC, OJ No L73, 14.03.97, p.5 and by Directive 2003/35/EC, OJ No L156, 25.06.03, p.17), and

Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (OJ No L206, 22.07.92, p.7) to which there are amendments not relevant to these Regulations,

in so far as they relate to the extraction of minerals by marine dredging.

Subject to exceptions for dredging for national defence purposes and for dredging which is carried out under certain agreements in existence prior to the Regulations coming into force, the Directives are implemented by ensuring that permission is required for marine dredging projects which engage either directive (regulation 5) and that any dredging carried out without permission where it is needed is an offence (regulation 4). Applications for dredging permission must be made to the regulator (regulation 10). The regulator is designated as the Secretary of State in respect of waters around England and certain outer areas of the continental shelf around Northern Ireland, Scotland and Wales, and the Department of the Environment in respect of waters in Northern Ireland (regulation 2(1), which also contains other definitions).

Directive 85/337 is implemented by requiring that an environmental statement is provided in relation to an application which relates to a relevant project, i.e. the extraction of minerals by dredging in marine waters which is likely to have significant effects on the environment (regulation 10). That statement must be taken into account in deciding the application (regulation 13). Directive 92/43 is implemented by requiring that an appropriate assessment is carried out of the effects of such dredging, where it is likely, either alone or in combination with other plans or projects, to have a significant effect on a European site (regulation 13(3) and Schedule 3). Such dredging is referred to in the Regulations as a “habitats project”. European sites are sites in the United Kingdom designated under Directive 92/43, and sites designated as special protection areas under Directive 79/409/EEC on the conservation of wild birds which are treated by Directive 92/43 as having been designated under that directive for these purposes. For the purposes of the Regulations sites which have been proposed by the United Kingdom for designation are also included. Where permission is required under regulation 5, it is an offence for persons other than the Crown to extract minerals by dredging in marine waters unless the dredging is carried out in accordance with a permission which has been granted under these Regulations (regulation 4).

The Regulations make provision for certain actions which may be undertaken before any application for permission is made. Regulation 6 enables any person who proposes to carry out dredging to request the regulator to determine whether that dredging would constitute a relevant project, and to determine whether it would constitute a habitats project. Regulation 7 enables a person who intends to make an application for permission which requires an environmental statement to request the regulator to give an opinion as to the information to be provided in that environmental statement. Regulation 8 requires appropriate consultation bodies, as defined in the Regulations, government departments and the regulator to identify and provide information to assist in the preparation of an environmental statement and enables them to charge for it. Regulation 9 provides for the payment of fees in respect of requests for opinions under regulation 7 and the provision of information by the regulator under regulation 8.

Regulation 10 requires that any application for permission include an environmental statement (unless the regulator has determined otherwise). Any application for permission must be accompanied by a fee determined in accordance with regulation 25. Regulation 11 allows the

regulator to require the applicant to provide further information, if the regulator considers the original environmental statement contains insufficient information to enable the environmental effects of the proposed dredging to be fully considered. Under regulation 12 applications must be subject to publicity and consultation. Regulation 13 sets out the considerations (including the environmental statement and any assessment of the effect on a European site) and procedure which apply to deciding applications. Before deciding an application for permission to carry out dredging, the regulator may give certain parties an opportunity of making representation in person or in writing to a person appointed by the regulator. Regulation 14 creates offences where false information is provided in relation to obtaining a permission.

Under regulation 15 provision is made for consultation with any other EEA state where dredging is likely to have significant effects on the environment in that EEA state.

Provision is made under the Regulations for the transfer (regulation 16) and the variation on application (regulations 17 to 20) of a permission. A permission may also be revoked or varied otherwise than on an application, or suspended (regulations 21 and 22), where necessary in order to protect the environment. Regulation 23 provides for offences related to the transfer or variation of a permission.

Regulation 25 provides for the regulator to determine the fees which must be paid in respect of the regulator's expenses of complying with either regulation 7 or 8 or both, of considering applications under the regulations and of monitoring permissions. Regulation 26 requires the regulator to keep a public register of applications for permission, related approvals, decisions, determinations and opinions and information provided by applicants under the Regulations.

Regulation 27 provides for the penalties which apply to offences under the Regulations, and regulation 28 disapplies section 3 of the Territorial Waters Jurisdiction Act 1878, with the effect that the consent of the Secretary of State will not be needed for prosecutions against foreign nationals under these Regulations. Regulation 29 allows the regulator to hold an inquiry before exercising certain functions under the Regulations. Regulation 30 makes provision for the use of electronic communications in complying with the procedures established by the Regulations.

Transitional arrangements are set out in regulation 31. Necessary consequential amendments, with savings, are made to the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 (S.I. 1999/293) and to the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) (S.R. 1999 No 73), by regulation 32.

Schedule 1 sets out requirements for what must be included in an environmental statement.

Schedule 2 sets out the criteria which are relevant when the regulator determines whether a dredging project is a relevant project.

Schedule 3 imposes requirements which are similar to those in regulations 48 to 53 (general provisions for the protection of European sites) of the Conservation (Natural Habitats &c) Regulations 1994 (S.I. 1994/2716). Paragraphs 2 to 4 of Schedule 3 deal with the protection of European sites in three different circumstances—

paragraph 2 deals with the process for carrying out an appropriate assessment of the effect of new dredging projects on existing European sites and specifies that permission may only be granted on the terms set out in sub-paragraphs (5) to (9);

paragraph 3 provides for a review of the effect of permissions on sites which become European sites after those permissions are granted; and

paragraph 4 provides for a review of the effect on European sites of dredging agreements which were entered into before the commencement of these Regulations.

For the purposes of paragraphs 3 and 4 of Schedule 3, the definition of European site is extended to include sites in the United Kingdom upon which the European Commission is consulting the United Kingdom as to whether they should be designated.

Where a review of a permission or an agreement is carried out, the regulator must affirm, vary or revoke the permission. The procedure to be followed where the regulator revokes or varies a

permission is set out in paragraph 5, and the effect of the regulator's decision whether to proceed with the revocation or variation is set out in paragraph 6.

Where permission is granted or affirmed despite the negative implications for a European site, compensatory measures must be taken to ensure the overall coherence of the European network of such sites.

A regulatory impact assessment has been prepared in relation to these Regulations. It has been placed in the Library of each House of Parliament and copies may be obtained from Jonathan Lartice, Marine Environment Division, Department for Environment Food and Rural Affairs (Telephone: 020 7270 8626. Email: jonathan.lartice@defra.gsi.gov.uk).

Transposition notes are available from the same place.

Copies of the documents referred to in regulation 31(3) may be obtained from the same place, free of charge.

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